



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

John J. White, Jr., Esq.
Livengood, Fitzgerald & Alskog, PLLC
121 Third Avenue, P.O. Box 908
Kirkland, Washington 98083-0908

NOV - 6 2008

RE: MUR 5954
Reichert Washington Victory
Committee and Keith Davis,
in his official capacity as
treasurer

Dear Mr. White:

On November 28, 2007, the Federal Election Commission ("the Commission") notified your clients, the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer ("Committee"), of a complaint alleging that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on October 29, 2008, voted to dismiss the allegation that the Committee violated 11 C.F.R. § 102.17(c). Accordingly, the Commission closed its file in this matter.

Nevertheless, based on facts and circumstances of the matter, the Commission admonishes your clients to accurately deposit all joint fundraising proceeds into its joint fundraising account. See 11 C.F.R. § 102.17(c)(3)(i) and (ii). Commission regulations stipulate that joint fundraising representatives, such as the Committee, are required to establish a separate account into which all joint fundraising receipts are to be deposited within 10 days of receipt and from which all disbursements are to be made. 11 C.F.R. § 102.17(c)(3)(i) and (ii). Your clients should take steps to ensure compliance with these provisions in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,

28044220272

MUR 5954
John J. White, Jr., Esq.
Page 2

68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Audra L. Wassom", with a long horizontal flourish extending to the right.

Audra L. Wassom
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

28044220273

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Reichert Washington Victory Committee and Keith Davis,
in his official capacity as treasurer MUR 5954

I. FACTUAL BACKGROUND

28044220274
This matter arises from a complaint alleging that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer ("RWVC"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to comply with the accounting and reporting requirements for conducting joint fundraising activities in connection with an August 27, 2007 reception honoring Representative Dave Reichert. *See* 11 C.F.R. § 102.17.

The RWVC is a joint fundraising committee formed pursuant to 11 C.F.R. § 102.17 by Friends of Dave Reichert ("FDR") and the Washington State Republican Party ("WSRP"). *See* Statement of Organization, dated August 8, 2007. As such, the RWVC established a separate depository account used solely for receiving federally permissible contributions and distributing net proceeds to its participating committees, FDR and WSRP. *Id.*; 11 C.F.R. § 102.17(c)(3)(i). On August 27, 2007, the RWVC hosted a fundraising reception honoring Reichert and featuring President George W. Bush. The invitation invited recipients to purchase, by check made payable to the RWVC or by credit card, VIP reception tickets for \$10,000 (given or raised) or "attendee" tickets for \$1,000.

28044220275

The invitation also included a disclaimer outlining the allocation of funds raised in connection with the event.¹ In pertinent part, this disclaimer stated that fundraising proceeds would be distributed to FDR “to the extent permitted by” the Act and any remaining funds would be transferred to the WSRP’s federal account. According to the disclaimer, funds constituting excessive or prohibited contributions under the Act would be refunded. Invitees were also informed that, notwithstanding the allocation formula, they were free to designate their contribution to either participant. Further, the disclaimer stated that the allocation formula was subject to change in the event contributions were received that exceeded the amount a contributor could give to either participant under federal law.

Invitation recipients made credit card contributions to the subject event through the RWVC’s website or by telephone. According to FDR’s Finance Director Eric Yates, FDR believed that credit card contributions to the joint fundraising event could be electronically processed using FDR’s merchant number and then routed into the RWVC’s account. However, due to what the response describes as a “miscommunication,” these credit card contributions were electronically deposited directly into FDR’s account instead of the joint fundraising committee’s account. Apparently, FDR discovered after the event that a coding error on the RWVC’s webpage prevented credit card contributions from being automatically transferred into the RWVC’s account. Further, because the processing company had placed the funds into a “suspense” account, funds could not be manually released into the joint fundraising account. According to Yates, the bank informed FDR that the funds could only be released into an

¹ All participants in joint fundraising events must enter into a written agreement that identifies the fundraising representative and sets out the formula for allocating proceeds. 11 C.F.R. § 102.17(c)(1). Although the written agreement need not be filed with the Commission, it must be retained by the fundraising representative for at least three years and made available to the Commission on request. *Id.* The participants are also to use the formula to allocate the expenses incurred in fundraising. 11 C.F.R. § 102.17(b)(3)(i).

account associated with the merchant identification number, which meant that the joint fundraising proceeds had to be released into FDR's account. As a result, FDR deposited a total of \$93,600 of these credit card contributions into its account and reported them as direct contributions in its 2007 October Quarterly Report. The 2007 October Quarterly Report reflects the receipt of these contributions from twelve (12) individuals as well as the refund of \$44,600 in excessive contributions to these same individuals.²

Lee Ann Farrell was one of the twelve individuals whose credit card contribution was routed into FDR's account. Farrell contends that she made a \$13,000 credit card donation to RWVC in response to an invitation to the August 27, 2007 event. Farrell states that at the time she made her telephone contribution she understood "that the contribution was within the amount legally permitted to be made in connection with the President's visit." After all of Farrell's contribution was unintentionally deposited into FDR's account, FDR informed Farrell that her contribution was in excess of the amount she was legally entitled to contribute to the committee. Within twenty-four hours, FDR issued Farrell a refund in the amount of \$8,400.³ Several weeks later, FDR issued an additional \$1,000 refund to Farrell from her August 2007 contribution after realizing that she had made a \$1,000 contribution to the campaign in March 2007.

The complaint alleges that the RWVC failed to accurately account for and report contributions raised in connection with the August 27, 2007 event honoring respondent Reichert and featuring President George W. Bush in violation of 11 C.F.R. § 102.17. According to the

² It appears that FDR began the process of arranging for a majority of these refunds prior to the actual release of funds into its account. FDR's 2007 October Quarterly Report indicates that seven (7) of the refunds were made prior to the date the contributions were reported as having been received by the committee.

³ The day after receiving this refund, Farrell contributed \$8,400 to RWVC, which committee in turn transferred that same amount of money to WSRP.

complaint, FDR admitted that some of the contributions raised at the event were handled in violation of this regulation when it issued a statement that it had raised more funds at the subject event than was reported by the RWVC, which was specifically established to receive all contributions associated with the event. *See* 11 C.F.R. § 102.17(c). In this press statement, FDR states that the credit card application used in processing contributions deposited money into the wrong account resulting in electronic overpayments to FDR.

The RWVC denies violating the Act in connection with the subject fundraising event and asserts that it accounted for all contributions it received and accurately reported all receipts and expenses. While acknowledging that joint fundraising receipts were mistakenly deposited into FDR's account, the response contends that FDR also appropriately reported all direct contributions it received in connection with the joint fundraising solicitation, including the funds deposited as a result of the processing error described *supra* at 2 and 3. According to Yates, because FDR "actually" received the credit card contributions, those funds became reportable contributions by that committee as opposed to the RWVC. Further, the response asserts that, although those contributions to FDR were excessive, FDR arranged for refunds within the statutory period.

II. LEGAL ANALYSIS

Commission regulations stipulate that joint fundraising representatives, such as the RWVC, are responsible for collecting contributions, paying costs, distributing the proceeds of the joint endeavors, and for satisfying the recordkeeping and reporting responsibilities of political committees. 11 C.F.R. § 102.17(b)(1). The fundraising representative is also required to establish a separate account into which all joint fundraising receipts are to be deposited within

28044220277

10 days of receipt and from which all disbursements are to be made. 11 C.F.R. § 102.17(c)(3)(i) and (ii).

As the fundraising representative for FDR and the WSRP, the RWVC was responsible for depositing all contributions raised in connection with the August 27, 2007 fundraising event into a separate account established for that purpose. 11 C.F.R. § 102.17(c)(3)(i) and (ii). The respondents admit that, as a result of a miscommunication relating to processing the funds electronically, some credit card contributions made in response to the joint fundraising invitation were not deposited into the RWVC's account as intended, but were instead deposited into FDR's account. Thus, it appears that the RWVC violated 11 C.F.R. § 102.17(c) by failing to accurately deposit \$92,600 in joint fundraising proceeds into its joint fundraising account. However, because the RWVC's violation was inadvertent and promptly corrected, the Commission dismisses the allegation that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) and issues an admonishment letter as to the respondents' failure to appropriately deposit joint fundraising proceeds into the joint fundraising account.

28044220278